

Wringe, Bill. *An Expressive Theory of Punishment*

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Theories of punishment operate at different levels: they can provide a justification for the practice of state-imposed punishment; and they may also explore certain aims or purposes of punishment, which are typically thought to depend upon some broader justification. A justification for punishment generally provides good reasons why society is warranted in denying offenders liberties, or imposing other harm, in response to certain acts. Such justificatory theories tend to be either forward-looking (e.g. consequentialist), or backward-looking (e.g. legal moralism); or they might represent some hybrid of forward- and backward-looking justifications. Specific aims or purposes that might be achieved via imposition of punishment include delivering to an offender their “just deserts” (where this aim may be justified as a means to apply blame to an offender for an immoral act), or deterring, incapacitating, and rehabilitating potential offenders (where these aims may be justified via their good consequences; e.g. lower crime rates).

This book represents Wringe’s comprehensive expressivist theory of punishment. Expressivism about punishment claims that it is essential to an act’s constituting punishment that it expresses social disapproval (see J. Feinberg “The Expressivist Function of Punishment,” *The Monist* 49 [1965]: 397-423; A. Duff, *Punishment, Communication, and Community* [Cambridge: Cambridge University Press 2009]). Expressivist theories of punishment do not fit neatly within the above schema: it often isn't clear whether an expressivist theory is offered as a justification for punishment, or as an account of a particular purpose of punishment. This is true of Wringe's book. There are moments in the book when Wringe seems to be offering a justification for punishment; and others have interpreted his project in this book as a justification (for example, see AYK Lee’s review of *An Expressive Theory of Punishment*, in *Philosophical Quarterly* [2016]: advance online). However, Wringe says he is “...not attempting to provide anything that might be an expressive justification of punishment” (18), and that “...[W]e need not assume that on a denunciatory [expressivist] account, punishment can have no other goals than that of expressing a message of a particular sort” (103).

In the end, the success of Wringer's theory depends on how broadly we interpret his theory. As a detailed defense of expressivism as one aim or purpose of punishment, the book is very successful: Wringer's arguments for denunciatory expressivism are clearly-articulated, persuasive, and well-defended. However, Wringer does not provide a broad justification of state-imposed punishment of offenders. Thus it would have been helpful for Wringer to make clear the way his theory interacts with justifications and other purposes of punishment.

The first half of the book (chapters 1-4) defends the way in which Wringer's particular theory, 'denunciatory' expressivism, handles paradigmatic cases of punishment as compared to non-expressivists and other versions of expressivism. The second half (chapters 4-8) discusses several difficult cases for any theory of punishment from the perspective of this theory, including whether "perp walks" constitute punishment (chapter 5), and whether corporations and states can be punished (chapters 7 and 8).

The traditional contemporary conception of punishment can be traced back to HLA Hart, who defined punishment as harsh treatment, inflicted on an offender by one with appropriate authority, in response to some wrongdoing (HLA Hart, *Punishment and Responsibility* [Oxford: Clarendon, 1968]). Expressivist theories tend to accept this traditional conception, but add a further condition that the punishment communicate something to the offender or society (94-95). Wringer's expressivism departs from the views of another prominent expressivist theorist, Antony Duff. Duff argues that the audience of punishment's expression of disapproval is the offender him or herself, with the aim of inducing remorse or regret (A. Duff, *Punishment, Communication, and Community* [Cambridge: Cambridge University Press, 2009]). Wringer instead argues that the audience at which our expressive acts of punishment are aimed are the community in which both offender and victim are members, arguing that such within such groups "membership in the community is something it makes sense for individuals to value" (13). Punishment sends a message of disapproval to the community that "certain norms are in force and that transgressions against them are viewed seriously" (24). Hence the 'denunciatory' label.

One worry about expressivism is that it may treat offenders as a means to an end (39), a criticism also often lobbed at consequentialist justifications of punishment. Wringer responds to this challenge by arguing that on his version of expressivism, an offender is addressed by the state not qua offender, but qua citizen (58). The message communicated is that the offender has committed a particular crime, and thus has acted wrongly (60). In addressing an offender as a citizen, a state – conceived as a body of individuals who have undertaken a joint commitment – emphasizes to the offender and society that he is “one of us” with societal commitments (64). Because punishment is aimed sending a message to group to which the offender is a member, sending that message via punishment of that offender ought not to be seen as using him as a means to an end.

Wringer addresses two other major challenges to expressivist views of punishment - the “harsh treatment” and “publicity” challenges. The harsh treatment challenge rests upon the notion that, all things being equal, treating another person harshly, such that they are likely to suffer, is wrong. Thus, the specific harm caused to offenders by the state in the name of punishment must be justified. On retributive notions of punishment, the state may claim that it can cause such harm because an offender deserves to suffer in response to the moral wrong she has committed. Wringer argues that punishment must consist in harsh treatment to communicate to society that violation of norms are taken seriously; however, he argues that delivering such harsh treatment does not necessarily involve acting with the intention of harming the offender, as some theories of punishment claim (19, citing D. Boonin, *The Problem of Punishment* [Cambridge: Cambridge University Press, 2008]). Wringer thus attempts to avoid the task of having to justify punishment as state action expressly aimed at harming offenders: although it is not incidental that punishment imposes suffering, it need not involve intentional infliction of suffering - this is not its aim. Instead, persons who are punished suffer not because this is a necessary part of punishment, but due to the “normal and foreseeable workings of our penal institutions,” because the expressive aim of punishment cannot be achieved in ways which do not involve some level of suffering (20). For Wringer, the harm caused to offenders in the process of expressing disapproval via punishment is just a necessary but somewhat unfortunate side-effect (86-87).

Here again Wringer wants to distinguish himself from Anthony Duff's version of expressivism, which holds that the suffering caused by punishment is justified at least in part as communication aimed at offenders with the hope of prompting remorse and reconciliation (71). Duff's theory runs into the problem of unreceptive offenders – those who are unable or unwilling to grasp the message punishment is intended to communicate, and thus will not experience remorse (81). On Duff's theory, punishment in the case of the unreceptive offender will have failed; but on Wringer's theory, if the state fails to cause suffering in a particular offender via their punishment, the punishment itself has not necessarily failed, precisely because the punishment can still communicate something to society. This is an important payoff of Wringer's denunciatory theory. There are offenders who do not internalize the law in HLA Hart's sense; who feel so disenfranchised by American society that they do not feel the law gives them reasons to act or refrain from acting. And there are offenders for whom jail or prison are an improvement over their lives on the "outside," and thus their punishment of incarceration may be seen as a benefit, not a harm. In these cases, Wringer may hold that a message regarding the importance of certain norms can still be successfully delivered, and thus avoid the project of having to promote new sorts of punishment that may be experienced as harsh by unrepentant offenders such that they may feel remorse.

In the second half of the book, Wringer uses his denunciatory expressivism to analyze several sticky cases of punishment, including "perp walks" (chapter 5), war crimes (chapter 6), and punishment of corporations (chapter 7) and states (chapter 8). These chapters generate mixed results. Although I appreciated the way in which application to a specific state action – the treatment of offenders after arrest but prior to trial – helped solidify aspects of the theory in my mind, I was not convinced that perp walks ought to be considered unjustified punishment, as Wringer argues. Neither was I convinced that his theory can give a clean account of punishment of actors who commit war crimes or states who violate international law. The reason why corporations may be successfully punished, but not states, is because there are good arguments that at least some corporations are members of a society (e.g. a society where they are legally incorporated and utilize laws and the court system to their benefit). Punishment of corporations may indeed express a message about the seriousness with which society views violation of certain norms by a corporation who is a member of that

society. However, Wringle did not convince me there is an identifiable society to which punishment may speak in the case of nation states – the international community is too nebulous, and state ties to international law are too weak.

Much of what is written here has been published as journal articles or book chapters elsewhere. This is a negative aspect of the book: given that many readers can now find electronic papers via Google Scholar or The Philosophical Underclass, a book is really only a wise investment if it contains a decent cache of new material. And there are some issues with the way in which the previously published material is pieced together. There is some overlap and repetitiveness between the chapters, and a few weird moments when the author seems to be confused with regard to which instance of punishment he is discussing: for example, on page 133, he refers to punishment of the state, although the issue at hand in the chapter is the punishment of business corporations.

These blemishes aside, the book has a nice flow, and is methodically and persuasively argued – it is a very nice example of contemporary analytic social political philosophy, where even the purpose of conceptual analysis is defended before Wringle is willing to push his argument further (5-8). It was especially nice to read a book on such a complex issue that delves deeply into the relevant literature but does not get mired in it; instead, Wringle swiftly addresses counter-arguments and then continues to move the ball forward, so the reader never gets lost in the argument.

I think the tone of a philosopher's argument is an underappreciated facet of philosophical writing: it can make a difference to the reader's willingness to plod on and receptiveness to a philosophical theory. Wringle's tone is friendly and helpful. One can easily imagine sitting and having a collegial conversation with him. The way Wringle discusses other theories makes clear that he refuses to set up straw men; he responds kindly and thoroughly to imagined objections. Wringle's clear and conversational style of writing reminds me of those great philosophers beloved by undergraduates and non-philosophers for their ability to deliver complex ideas in clear and entertaining sentences: Putnam, Searle, and Nussbaum come to mind. In sum, Wringle sounds like a nice guy who is hesitantly critical of other views in order to advance the reader's

understanding, and this inspires granting him the benefit of the doubt when he made a move that seemed odd.

In the end, my faith in Wringer paid the dividend of a very thoughtful and complex theory of expressivism. However: this theory addresses just one purpose of punishment – one of many, perhaps – and does not constitute a grand justification of punishment. Wringer indicates that he might consider his theory a part of a ‘unified’ theory of punishment, on which punishment is justified insofar as it achieves a number of aims (such as is discussed in T. Brooks, *Punishment* [London: Routledge, 2012], 123-148). But he does not provide readers any sense of what such a unified justification of punishment might consist in (Which aims are to be included? How would this a theory differ from a hybrid justificatory theory?).

Wringer could nest his theory within a broader backward-looking justification. For example, we might be justified in state punishment of persons who have certain moral capacities and cause harm because these people are morally blameworthy, and one purpose of such punishment (in addition to retribution) might be to communicate to society our commitment to certain norms and the seriousness with which we take violations of those norms. Interestingly – given his apparent distaste for consequentialism – Wringer’s brand of expressivism might also be given a broad consequentialist justification. Manuel Vargas justifies holding persons responsible based upon the good impacts the practice of praise and blame has on moral agency at the societal level (M.Vargas, *Building Better Beings* [Oxford: Oxford University Press, 2013]). Wringer might claim that punishment’s communications have the consequences of enhancing moral agency at the group/society level (where the offender is a member of the group/society), and thus avoid the worry that a consequentialist justification for punishment treats offenders as a means to an end.

It seems unlikely that any version of expressivism can justify harsh treatment of an offender based solely upon the message it sends, either to society or to the offender. To my mind, punishment must be justified via the offender's blameworthiness (where blameworthiness is related to moral capacities or agency in some way); or via punishment's desired consequences (e.g. social order), or both. Otherwise, even if one believes punishment is communicative, the message of punishment is either undeserved or ineffective. The

explicitly claimed purposes of punishments in the US – for example, those embraced in the "purposes" section of the US Model Penal Code (section 1.02), and most state penal codes – include retribution and deterrence, broadly construed. It would be instructive to hear how these aims fit with Wringer's expressivist theory of punishment.

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